

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC E. A.,¹

Plaintiff,

v.

CAROLYN COLVIN, Acting
Commissioner of Social Security,²

Case No. CV 24-07390 DMG (ADS)

ORDER DISMISSING CASE FOR
FAILURE TO PROSECUTE AND
COMPLY WITH COURT ORDERS

I. INTRODUCTION

Plaintiff Eric E. A. (“Plaintiff”), represented by counsel, filed this civil lawsuit seeking review of a decision of the Commissioner of Social Security denying Plaintiff’s application for disability benefits. Plaintiff filed his

¹ Plaintiff’s name has been partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

² Carolyn Colvin became Acting Commissioner of Social Security on November 30, 2024. Under Federal Rule of Civil Procedure 25(d), she is automatically substituted for Martin J. O’Malley as Defendant in this suit.

1 Complaint on August 29, 2024. Since that date, Plaintiff has been given
2 several opportunities to move forward with his lawsuit and has
3 continuously failed to do so. As such, this case is dismissed in its entirety
4 for failure to prosecute and comply with Court orders pursuant to Federal
5 Rule of Civil Procedure 41(b).
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7 **II. PROCEDURAL HISTORY**

8 Plaintiff filed his Complaint on August 29, 2024. [Doc. # 1.] After
9 granting Plaintiff's request to proceed *in forma pauperis*, the Court issued
10 the Standing Order for this case on September 5, 2024. [Doc. # 7.] Under
11 the Standing Order, Plaintiff's opening brief in support of his Complaint
12 was due within thirty days from service of the Answer and Certified
13 Administrative Record ("CAR"), as required by the Supplemental Rules for
14 Social Security Actions Under 42 U.S.C. § 405(g). *Id.* at 4. On November 4,
15 2024, Defendant filed the Answer and CAR, which made Plaintiff's brief
16 due December 4, 2024. [Doc. # 9.] Plaintiff failed to file his brief.
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18 On December 6, 2024, the Court issued an Order to Show Cause as to
19 why this case should not be dismissed for failure to prosecute. [Doc. # 10.]
20 Plaintiff was ordered to respond by no later than December 13, 2024. The
21 Court advised Plaintiff that his failure to timely file a response to the Order
22 to Show Cause would result in a recommendation that this action be
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1 dismissed for failure to prosecute and obey Court orders pursuant to
2 Federal Rule of Civil Procedure 41(b). As of the date of this Order, Plaintiff
3 has failed to file his brief or any response to the Court's Order to Show
4 Cause and the deadline has long passed.

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6 **III. FAILURE TO PROSECUTE AND COMPLY WITH COURT**
7 **ORDERS**

8 The Court expressly cautioned Plaintiff that failure to respond would
9 result in a recommendation that the action be dismissed under Federal
10 Rule of Civil Procedure 41(b). Plaintiff's failure to comply with the
11 Standing Order and his failure to respond to the Order to Show Cause
12 reflect a lack of prosecution of the case. *See Link v. Wabash R.R.*, 370 U.S.
13 626, 629–30 (1962); Fed. R. Civ. P. 41(b). His failure to respond also
14 demonstrates a failure to comply with Court orders.

16 In *Carey v. King*, 856 F.2d 1439 (9th Cir. 1988), the Ninth Circuit
17 cited the following factors as relevant to the Court's determination of
18 whether to dismiss an action for failure to prosecute: "(1) the public's
19 interest in expeditious resolution of litigation; (2) the court's need to
20 manage its docket; (3) the risk of prejudice to the defendants; (4) the public
21 policy favoring disposition of cases on their merits; and (5) the availability
22 of less drastic sanctions." *Id.* at 1440.
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1 Upon consideration of the five *Carey* factors, the Court finds that
2 Plaintiff's failure to prosecute his case and failure to comply with the
3 Court's orders warrant dismissal. The first two *Carey* factors—the public's
4 interest in expeditiously resolving this litigation and the Court's interest in
5 managing the docket—weigh in favor of dismissal. Plaintiff has not taken
6 any action in this case since August 29, 2024, and has ignored two Court
7 orders. The Court cannot hold this case in abeyance indefinitely awaiting
8 Plaintiff's response to the Court's directive. The third factor, risk of
9 prejudice to Defendant, also weighs in favor of dismissal since a
10 presumption of injury arises from the occurrence of unreasonable delay in
11 prosecuting an action. *See Anderson v. Air West, Inc.*, 542 F.2d 522, 524
12 (9th Cir. 1976). The fourth factor, the public policy favoring disposition of
13 cases on their merits, is greatly outweighed by the factors in favor of
14 dismissal.
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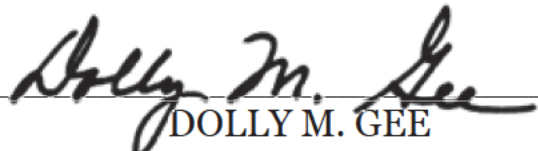
17 Furthermore, Plaintiff has already been cautioned of the
18 consequences of his failure to prosecute and ordered to show cause why the
19 action should not be dismissed. Plaintiff has been afforded the opportunity
20 to do so yet has not responded. No sanction lesser than dismissal is feasible
21 here. Thus, dismissal of this action is warranted under Federal Rule of Civil
22 Procedure 41(b).
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1 **IV. CONCLUSION**

2 IT IS THEREFORE ORDERED that this action be summarily
3 dismissed pursuant to Federal Rule of Civil Procedure 41(b).
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5 IT IS SO ORDERED.
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8 DATED: September 29, 2025


DOLLY M. GEE

Chief United States District Judge